

Notes of Decisions

Disclosure of governmental activities 1 sede the statutes and rules governing the attorney-client privilege. Ops.Atty.Gen. No. 00-1203 (May 23, 2001).

1. Disclosure of governmental activities The "whistleblower" statutory protections applicable to employees of state and local public entities do not super-

§ 9149.21. Legislative intent

It is the intent of the Legislature that state employees and other persons should disclose, to the extent not expressly prohibited by law, improper governmental activities. (Added by Stats.1999, c. 156 (A.B.1412), § 1.)

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§ 9149.22. Definitions

*Malicious Prosecution*

For the purposes of this article, the following words have the following meanings:

- (a) "Committee" means any investigating committee of the Legislature.
(b) "Employee" means any individual appointed by the Governor or employed or holding office in a state agency, as defined by Section 11000, including the California State University and the University of California, or any public entity as defined by Section 7260, or any agency of local government, as defined in subdivision (d) of Section 8 of Article XIII B of the California Constitution.

(c) "Improper governmental activity" means any activity by a governmental agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(Added by Stats.1999, c. 156 (A.B.1412), § 1.)

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§ 9149.23. Interference with person's right to disclose improper governmental activities; civil liability

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a legislative committee improper governmental activities.

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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Chapter 2

OFFICERS AND EMPLOYEES OF THE LEGISLATURE

Article 3

POWERS AND DUTIES

Section 9191.5. Secretary of Senate; Chief Clerk of Assembly; power to administer and certify oaths and provide proof or acknowledgment of an instrument.

§ 9191.5. Secretary of Senate; Chief Clerk of Assembly; power to administer and certify oaths and provide proof or acknowledgment of an instrument

The Secretary of the Senate and Chief Clerk of the Assembly may administer and certify oaths and may provide the proof or acknowledgment of an instrument in accordance with Article 3 (commencing with Section 1180) of Chapter 4 of Part 4 of Division 2 of the Civil Code.

(Amended by Stats.1999, c. 20 (S.B.301), § 3.)

Chapter 3.5

RETIREMENT OF LEGISLATORS

Article 9. Supplemental Contributions Program [Repealed] Section 9380

Article 1

DEFINITIONS AND GENERAL PROVISIONS

Section 9350.56. State service. Section 9350.6. Compensation; salary. 9351.3. Legislator.

§ 9350.3. Board of administration; board

Cross References

Board of administration, see Government Code § 20090.

§ 9350.56. State service

"State service," within the meaning of Sections 9350.55, \* \* \* 9356.15, and 9356.16 means employment with the Legislature or either house thereof as an officer or employee.

(Amended by Stats.1998, c. 1074 (S.B.1021), § 2, eff. Sept. 30, 1998.)

Additions or changes indicated by underline; deletions by asterisks \* \* \*

this section independently and substantially increases the early settlement of cases.

1021.4. In an action for damages against a defendant based upon that defendant's commission of a felony offense for which that defendant has been convicted, the court may, upon motion, award reasonable attorney's fees to a prevailing plaintiff against the defendant who has been convicted of the felony.

1021.5. Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.

Attorneys' fees awarded to a public entity pursuant to this section shall not be increased or decreased by a multiplier based upon extrinsic circumstances, as discussed in *Serrano v. Priest*, 20 Cal. 3d 25, 49.

1021.6. Upon motion, a court after reviewing the evidence in the principal case may award attorney's fees to a person who prevails on a claim for implied indemnity if the court finds (a) that the indemnitee through the tort of the indemnitor has been required to act in the protection of the indemnitee's interest by bringing an action against or defending an action by a third person and (b) if that indemnitor was properly notified of the demand to bring the action or provide the defense and did not avail itself of the opportunity to do so, and (c) that the trier of fact determined that the indemnitee was without fault in the principal case which is the basis for the action in indemnity or that the indemnitee had a final judgment entered in his or her favor granting a summary judgment, a nonsuit, or a directed verdict.

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1021.7. In any action for damages arising out of the performance of a peace officer's duties, brought against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or against a public entity employing a peace officer or in an action for libel or slander brought pursuant to Section 45 or 46 of the Civil Code, the court may, in its discretion, award reasonable attorney's fees to the defendant or defendants as part of the costs, upon a finding by the court that the action was not filed or maintained in good faith and with reasonable cause.

1021.8. (a) Whenever the Attorney General prevails in a **civil** action to enforce Section 22445, 22446.5, 22958, or 22962 of the

## GOVERNMENT CODE

### SECTION 815-818.9

815. Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

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815.2. (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

815.3. (a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.

(b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties.

If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.

(c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the